

# EXHIBIT A

**DEFENDANTS' AFFIRMATIVE DEFENSES**  
**IN ANSWERS TO**  
**PLAINTIFFS' THIRD AMENDED MASTER CONSOLIDATED CLASS ACTION COMPLAINT**

<b>Affirmative Defense Description</b>	<b>Astra's Number</b>	<b>Glaxo's Number</b>	<b>J&amp;J's Number</b>	<b>BMS's Number</b>	<b>Schering's Number</b>	<b>Warrick's Number</b>
Failure To State a Claim Upon Which Relief Can Be Granted	1	1	1	1	1	1
Political Question and Separation of Powers Doctrines	2	2	2	3	2	2
Filed Rate	3	3	3	4	3	3
No Injury	4	4	4		4	4
If Plaintiffs obtain recovery in another case, then claims barred by res judicata, collateral estoppel and prohibition of double recovery	5	5	5		5	5
Plaintiffs' claims barred by First Amendment of Constitution or similar provision of applicable state constitution	6	6 (spec. ident. certain states)	6 (spec. ident. certain states)		6 (spec. ident. certain states)	6
Noerr-Pennington	7	7	7	6	7	7
Plaintiffs' claims barred by release, settlement, accord and satisfaction	8	8	8		8	8
Defendants acted in good faith and in accord with established industry practice	9	9	9	9	9	9
Preemption (ERISA and Medicare and Medicaid)	10	10	10	7	10	10

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Failure To State a Claim Upon Which Relief Can Be Granted	1	1	1	1	1	1
Preemption (Commerce Clause)	11	11	11		11	11
Plaintiffs' claims barred because Defendants complied with all applicable federal and state regulations	12	12	12		12	12
Plaintiffs' claims barred by statutes of limitations, repose, laches, estoppel and waiver	13	13	13	8	13	13
Plaintiffs' claims barred because of violation of Defendants' rights under Due Process and Ex Post Facto clauses of U.S. and state Constitutions, insofar as seek to impose liability retroactively for conduct not actionable when it occurred	14	14	14			
Defendants' statements and actions not proximate cause or cause in fact	15	15	15	10	14	14
Failure to plead fraud with particularity, specifically fraudulent concealment and multisource drug issues	16	16	16		15	15
Failure to allege civil conspiracy with particularity	17	17	17		16	16
Plaintiffs' claims barred because Defendants did not make false statements to Plaintiffs - Defendants did not believe any statements were false or misleading	18	18	18		17	17
Plaintiffs' claims barred because Defendants did not conspire (directly or indirectly) with any other entity	19	19	19			

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RICO claims barred for failure to properly allege RICO enterprise	20	20	20		18	18
RICO claims barred for failure to plead facts showing Defendants and PBMs ongoing organizations whose members function as continuing unit with common purposes	21	21	21		19	19
RICO claims barred for failure to allege Defendants conducted the affairs of alleged enterprises	22	22	22		20	20
Lack of standing to bring RICO claims as Plaintiffs cannot show Defendants directly caused alleged injuries as required by 18 U.S.C. § 1964(c) and <i>Holmes</i> case	23	23	23	2	21	21
Civil conspiracy claims barred for failure to allege concerted action as required by First Circuit cases	24	24	24		22	22
Civil conspiracy claims barred because duplicative or improper under Massachusetts law	25	25	25		23	23
Lack of valid consumer protection claims agt Defendants under state statutes alleged in Counts IV, V, VI and VII	26	26 (spec. ident. certain states)	26 (spec. ident. certain states)		24 (spec. ident. certain states)	24 (spec. ident. certain states)
Allegedly fraudulent statements and conduct of Defendants did not proximately cause injuries to Plaintiffs under state statutes alleged in Counts IV, V, VI and VII	27	27 (spec. ident. certain states)	27 (spec. ident. certain states)			

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Failure To State a Claim Upon Which Relief Can Be Granted	1	1	1	1	1	1
Defendants' conduct was not "deceptive," "misleading," "unlawful" or "illegal" under state statutes alleged in Counts IV, V, VI and VII	28	28 (spec. ident. certain states)	28 (spec. ident. certain states)			
Plaintiffs are not entitled to equitable relief because there is an adequate remedy available at law	29	29	29	11	25	25
Plaintiffs lack standing to bring consumer protection claims against Defendants under state statutes alleged in Counts IV, V, VI and VII	30	30 (spec. ident. certain states)	30 (spec. ident. certain states)	2	26 (spec. ident. certain states)	26 (spec. ident. certain states)
Plaintiffs did not rely upon allegedly fraudulent statements or conduct of Defendants as required by state consumer protection laws, including NY and PA	31	31	31		27	27
Any fraudulent statements made by Defendants were not consumer-oriented as required under certain consumer protection laws, including NY	32	32	32		28	28
Claims for injunctive relief were mooted by passage of 2003 Medicare reform legislation	33	33	33	12	29	29
Claims for injunctive relief are barred by doctrines of in pari delicto or unclean hands	34	34	34		30	30
Action cannot be maintained as Class Action for several reasons	35	35	35		31	31

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Failure To State a Claim Upon Which Relief Can Be Granted	1	1	1	1	1	1
Antitrust claims barred because no antitrust injury, lack of standing and because alleged conspiracy does not make economic sense	36	36	36	2		
Restraints complained of are ancillary to legitimate, pro-competitive activity	37	37	37			
Defendants' conduct did not have adverse effects on competition	38	38	38			
Claims against Defendants under Section 1 of Sherman Act barred under indirect purchaser rule	39		39			
Antitrust claims under state antitrust statutes barred to extent state statutes do not allow recovery by indirect purchasers and do not govern since conduct predominantly interstate in nature	40	39	40			
Antitrust claims under state unfair trade and competition statutes barred to extent state statutes do not allow recovery by indirect purchasers and do not govern since conduct predominantly interstate in nature	41	40	41			
Antitrust claims under state consumer protection and consumer fraud statutes barred to extent state statutes do not allow recovery by indirect purchasers and do not govern since conduct predominantly interstate in nature	42	41	42		32	32

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Failure To State a Claim Upon Which Relief Can Be Granted	1	1	1	1	1	1
Antitrust claims under various state unfair trade, unfair competition, consumer protection and consumer fraud statutes are barred to extent claims are impermissible circumvention of state antitrust statutes and to extent statutes only apply to deceptive or misleading conduct and/or govern only consumer transactions	43	42	43			
TPPs' claims barred to extent overcharge passed on effect of higher charges through higher premiums and co-pays	44	43	44			
Plaintiffs' claims against Defendants barred to extent overcharges absorbed by direct purchaser and not passed through to consumers	45	44	45			
Plaintiffs' claims barred due to failure to join indispensable parties	46	45	46	13	33	33
Plaintiffs' claims barred because Plaintiffs suffered no damages	47	46	47	14	34	34
Plaintiffs' claims barred because any injuries resulted from intervening or superceding conduct of third parties	48	47	48		35	35

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Failure To State a Claim Upon Which Relief Can Be Granted	1	1	1	1	1	1
Plaintiffs' claims barred for failure to mitigate, and because Plaintiffs would be unjustly enriched if allowed to recover, claims barred by consent and ratification because Plaintiffs continued to purchase after filed Complaint and because damages speculative and remote because difficult to ascertain and allocate damages	49	48	49		36	36
Defendants entitled to Set-off for damages or settlement amounts already recovered	50	49	50		37	37
Damages should be limited by applicable statutory ceiling	51	50	51		38	38
Plaintiffs' claims insufficient respecting claims for attorney fees, treble damages and/or legal fees	52	51	52		39	39
Plaintiffs cannot recover punitive damages	53	52	53		40	40
Jury must be properly instructed on punitive damages	54	53	54			
Any punitive damages award must be subject to predetermined limit	55	54	55		41	41
Incorporation of affirmative defenses pled by other Defendants	56	55	56	15	42	42
Reservation of right to amend Answer to allege other affirmative defenses that may become available	57	56	57		43	43
Plaintiffs' claims barred by state action doctrine				5		



